IN THE

SUPREME COURT

OF THE

United States

October Term, 1956

THOMAS EISTRAT, *Petitioner,* vs. BRUSH INDUSTRIAL LUMBER COMPANY, a corporation, and JOHN A. BRUSH, *Respondents.*	No. 1074

PETITIONER'S REPLY BRIEF

In the second paragraph on page 3 of Respondents' Reply Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of California, respondents refer to Petitioner's Petition for Writ of Certiorari on file herein as No. 1074 and admit:

> "His recitation of facts set forth beginning at bottom of page 5 and continuing thru to top of page 7 is apparently accurate but Respondents see nothing there which would justify issuance of the Writ."

Respondents' admission thereby includes the admitted accuracy of petitioner's statement on page 6 of his Petition for Writ of Certiorari before this Court that:

> "A summarized statement of the merits of the case, with reference to the record is stated in appellant's opening brief. (Certified Record, App. Op. pp. 1-11)."

The identical summarized statement also appears in more legible printed form as page A1 to A11 in "Appellant's Petition for Hearing" filed in the Supreme Court of California (Certified Record herein).

Petitioner believes that consideration by the Justices of the United States Supreme Court of the foregoing facts admitted by Respondents will cause each Justice to conclude that the proponent before this Court is not the petitioner but is the Constitution of the United States demanding that the California State Courts respect federal judgments and apply state law without discrimination.

As said by the Court in *Chessman v. Teets*, 354 U.S. 156, "the requirements of the Due Process Clause of the Fourteenth Amendment must be respected—the overriding responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist—We must be deaf to all suggestions that a valid appeal to the Constitution—comes too late, because courts, including this Court, were not able to enforce what the Constitution demands."

One of our greatest federal judges, the Honorable Leon Yankwich, has expressed a forthright view in saying, Gentlemen, bring me the facts, they are generally confusing and difficult to obtain, but once having the facts the law is relatively easy to apply. This statement is now particularly applicable to this Petition for Writ of Certiorari.

With respondents' frank admission in their reply brief now before this Court that the "*recitation of facts*" set forth by petitioner "*at the bottom of page 5 and continuing thru to top of page 7 is apparently accurate*" there can be no reason the erroneous understanding of the facts adopted by the California State Courts should prevail and the contravention of the Fourteenth Amendment of the United States Constitution remain uncorrected.

The California State Supreme Court has recently admitted error in *County of Los Angeles v. Faus*, 48 A.C. 717, 312 P. 2d 680, 684, 685, where the court stated:

> "In taking this position it is recognized that we are overruling a line of decisions in this state that announce a contrary rule. The former rule was contrary to logic, unrealistic, and followed in only a few other states. It was merely a rule of procedure. Therefore, it becomes our duty not to follow decisions that we are convinced are erroneous and obsolete . . . . The rule of *stare decisis* is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each instance by the

discretion of the court. Previous decisions should not be followed to the extent that error may be perpetuated and that wrong may result."

Respondents having admitted the statement of facts to be accurate as set forth by petitioner in his Petition for Writ of Certiorari before the United States Supreme Court, petitioner believes it unnecessary to make detailed reply to the statements in Respondents' Reply Brief that are conclusions of law and statements contrary to the now admitted facts.

The second paragraph of page 3 of Respondents' Reply Brief herein makes a statement that petitioner's apparently accurate recitation of facts is not seen by respondents to justify issuance of the Writ of Certiorari. The purpose of respondents' statement must only be a further attempt by respondents to thwart a fair consideration of this Petition for Writ of Certiorari by the United States Supreme Court and thereby evade the mandate of the Due Process and Equal Protection Clause of the Fourteenth Amendment of our United States Constitution.

The second paragraph of page 9, together with the first and second paragraphs on page 11, of petitioner's Petition for Writ of Certiorari cites the applicable California state law which was not applied in petitioner's case in contravention of the Fourteenth Amendment of the United States Constitution. The certified record herein by petitioner's brief before the California state courts also show these and other cases wherein the California state courts contravened the Fourteenth Amendment.

Petitioner does not see how respondents, having now before the United States Supreme Court admitted the facts to be as stated by petitioner, can in good faith deny that the Fourteenth Amendment of the United States Constitution has not been contravened. Mr. Bertram Harris' statement before the District Court on July 26, 1954 (Certified Record, page 2 of transcript appended to Letter to California Supreme Court, dated March 2, 1957) states "Upon reading the answer to our petition, respondents again continue, it is our contention, to misrepresent to this court and misapply the facts and the law. To prove this, that the respondents are dancing a jig from one leg to another to continue to confuse the issues and facts and law, I call your attention to the following facts that appear in this record:".. Mr. Harris' remarks are equally applicable to respondents' statements in their Reply Brief now before this Court.

CONCLUSION

Respondents' Reply Brief has admitted the facts of petitioner's case to be as stated by petitioner; and by so doing respondents admit that all their past successes in the California state courts have been the result of respondents' misstatements of the facts.

Respondents further stated in their Reply Brief that they do not see that the true facts justify the issuance of the Writ of Certiorari indicates to petitioner respondents' lack of faith in the real existence of the United States Constitution as being equally

applicable to all within its jurisdiction without discrimination.

Petitioner believes he has now exhausted all his remedies before the California state courts, and that respondents now in effect admit by their misstating the facts they thwarted justice, prevented the state courts from giving effect to the binding federal judgment in petitioner's favor, prevented petitioner from having his day in the California state courts, and caused the California state courts to unknowingly contravene the Fourteenth Amendment of the United States Constitution.

Petitioner believes that the proponent now before this Court is not the Petitioner, but is the Constitution of the United States, and that the Justices of this Court will not be deaf to all suggestions that this valid appeal to the Constitution comes too late because courts, including this Court, were not able to enforce what the Constitution demands.

Respectfully submitted,

THOMAS EISTRAT,
Petitioner.